

## Assembly Bill No. 1712

### CHAPTER 449

An act to amend Section 17511.12 of the Business and Professions Code, to amend Sections 798.61 and 1780 of the Civil Code, to amend Sections 116.130, 116.530, 198.5, 393, 415.50, 1141.10, 1141.11, 1141.12, 1141.16, 1141.18, 1141.24, and 1161.2 of the Code of Civil Procedure, to amend Section 48295 of the Education Code, to amend Sections 12150 and 12151 of the Fish and Game Code, to amend Sections 68097, 68097.1, and 68097.2 of the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections 108580, 110375, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 6436 of the Labor Code, to amend Sections 1035, 1038, and 1462.2 of, and to repeal Sections 1034 and 1039 of, the Penal Code, to amend Section 5560 of the Public Resources Code, and to amend Section 310 of the Water Code, relating to courts.

[Approved by Governor September 20, 2003. Filed  
with Secretary of State September 22, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1712, Committee on Judiciary. Courts.

The California Constitution provides for the abolition of municipal courts and their unification within superior courts, as specified.

This bill would conform various statutory provisions of law to the abolition of municipal courts and their unification within the superior courts.

This bill would also make other statutory changes with respect to arbitration proceedings, guardian ad litem, jury lists, service of process, small claims court, and witness fees.

This bill would incorporate additional changes to Section 5560 of the Public Resources Code proposed by AB 504, to become operative only if AB 504 and this bill are both chaptered and become effective on or before January 1, 2004, and this bill is chaptered last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17511.12 of the Business and Professions Code is amended to read:

17511.12. (a) Every telephonic seller shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall

be in the amount of one hundred thousand dollars (\$100,000) in favor of the State of California for the benefit of any person suffering pecuniary loss in a transaction commenced during the period of bond coverage with a telephonic seller who violated this chapter. The bond shall include coverage for the payment of the portion of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for restitution to any person suffering pecuniary loss, notwithstanding whether the surety is joined or served in the action or proceeding. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. This bond may not be required of any cable television operator franchised or licensed pursuant to Section 53066 of the Government Code.

(b) (1) At least 10 days prior to the inception of any promotion offering a premium with an actual market value or advertised value of five hundred dollars (\$500) or more, the telephonic seller shall notify the Attorney General in writing of the details of the promotion, describing the premium, its current market value, the value at which it is advertised or held out to the customer, and the date the premium shall be awarded. All premiums offered shall be awarded. The telephonic seller shall maintain an additional bond for the total current market value or advertised value, whichever is greater, of the premiums held out or advertised to be available to a purchaser or recipient. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. The bond shall be for the benefit of any person entitled to the premium who did not receive it within 30 days of the date disclosed to the Attorney General as the date on which the premium would be awarded. The amount paid to a person under a bond required by this subdivision may not exceed the greater of the current market value or advertised or represented value of the premium offered to that person. The bond shall include coverage for the payment of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for payment of the value of premiums that were not timely awarded, notwithstanding whether the surety is joined or served in the action or proceeding. The bond shall also provide for payment upon motion by the Attorney General pursuant to subdivision (d) in the event the seller fails to provide the Attorney General with proof of the award of premiums as required in paragraph (2).

(2) Within 45 days after the date disclosed to the Attorney General for the award of premiums, the seller shall provide to the Attorney General proof that all premiums were awarded. The proof shall include the names, addresses, and telephone numbers of the recipients of the premiums and the date or dates on which the premiums were awarded. The bond shall be maintained until the seller files proof with the



Attorney General as required by this subdivision or until payment of the amount of the bond is ordered pursuant to subdivision (d).

(c) (1) In addition to any other means for the enforcement of the surety's liability on a bond required by this section, the surety's liability on the bond may be enforced by motion, as provided in this subdivision, after a judgment has been obtained against the seller.

(2) The Attorney General, district attorney, city attorney, or any other person who obtained a judgment for restitution against the seller, as described in subdivision (a), may file a motion in the court that entered the judgment to enforce liability on the bond without first attempting to enforce the judgment against any party liable under the judgment.

(3) The notice of motion, the motion, and a copy for the judgment shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the Consumer Law Section of the Department of Justice.

(4) The court shall grant the motion unless the surety establishes that the claim is not covered by the bond, or the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest.

(d) (1) In addition to any other means for the enforcement of the surety's liability on a bond required by subdivision (b), the surety's liability on the bond may be enforced by motion as provided in this subdivision.

(2) The Attorney General, district attorney, city attorney, or any person who claims the premium, may file a motion in the superior court of the county from which the seller made an offer of a premium, in which the seller maintains any office or place of business, or in which an offeree of the premium resides, or in any other court of competent jurisdiction. The motion shall set forth the nature of the seller's offer, the greater of the current market value or advertised or represented value of the premium, the date by which the premium should have been awarded, and the fact that the premium was not awarded as represented.

(3) The notice of motion and motion shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

(4) The court shall grant the motion unless the surety establishes that the claim is untrue or is not covered by the bond.

(5) The Attorney General may file a motion in the superior court of the county from which the seller made an offer of a premium, or in which an offeree of a premium resides, or in any other court of competent jurisdiction, for the payment of the entire bond if the seller fails to file



proof with the Attorney General of the award of all premiums as required by paragraph (2) of subdivision (b). The notice of motion and motion shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The motion shall be granted if the Attorney General establishes that the seller failed to file proof of making the timely award of all premiums. The recovery on the bond shall be distributed pro rata to the promised recipients of the premiums to the extent their identity is actually known to the Attorney General at the time payment is made by the surety. The balance of the recovery shall be paid to any judicially established consumer protection trust fund designated by the Attorney General or as directed by the court under the cy pres doctrine.

(e) No stay of a motion filed pursuant to this section may be granted pending the determination of conflicting claims among beneficiaries. An order enforcing liability on a bond may be enforced in the same manner as a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. Nothing herein affects the rights of the surety against the principal.

(f) The surety is not liable on the bond for payment of a judgment against a seller for any violation of this chapter unless the action or proceeding is filed within two years after the cancellation or termination of the bond, the termination of the seller's registration, or the seller's cessation of business, whichever is later.

(g) The surety is not liable on a motion made pursuant to subdivision (d) unless the motion is filed within two years of the date on which the seller represented the premium was to have been awarded.

(h) For the purpose of this section, "judgment" includes a final order in a proceeding for the termination of telephone service pursuant to Public Utilities Commission Tariff Rule 31.

(i) Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure shall apply to the enforcement of a bond given pursuant to this section except to the extent of any inconsistency with this section, in which event this section shall apply.

SEC. 2. Section 798.61 of the Civil Code is amended to read:

798.61. (a) (1) As used in this section, "abandoned mobilehome" means a mobilehome about which all of the following are true:

(A) It is located in a mobilehome park on a site for which no rent has been paid to the management for the preceding 60 days.

(B) It is unoccupied.

(C) A reasonable person would believe it to be abandoned.

(2) For purposes of this section:

(A) "Mobilehome" shall include a trailer coach, as defined in Section 635 of the Vehicle Code, or a recreational vehicle, as defined in



Section 18010 of the Health and Safety Code, if the trailer coach or recreational vehicle also satisfies the requirements of paragraph (1), including being located on any site within a mobilehome park, even if the site is in a separate designated section pursuant to Section 18215 of the Health and Safety Code.

(B) “Abandoned mobilehome” shall include a mobilehome that is uninhabitable because of its total or partial destruction that cannot be rehabilitated, if the mobilehome also satisfies the requirements of paragraph (1).

(b) After determining a mobilehome in a mobilehome park to be an abandoned mobilehome, the management shall post a notice of belief of abandonment on the mobilehome for not less than 30 days, and shall deposit copies of the notice in the United States mail, postage prepaid, addressed to the homeowner at the last known address and to any known registered owner, if different from the homeowner, and to any known holder of a security interest in the abandoned mobilehome. This notice shall be mailed by registered or certified mail with a return receipt requested.

(c) Thirty or more days following posting pursuant to subdivision (b), the management may file a petition in the superior court in the county in which the mobilehome park is located, for a judicial declaration of abandonment of the mobilehome. A proceeding under this subdivision is a limited civil case. Copies of the petition shall be served upon the homeowner, any known registered owner, and any known person having a lien or security interest of record in the mobilehome by posting a copy on the mobilehome and mailing copies to those persons at their last known addresses by registered or certified mail with a return receipt requested in the United States mail, postage prepaid.

(d) (1) Hearing on the petition shall be given precedence over other matters on the court’s calendar.

(2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney’s fees and costs to the petitioner. For purposes of this subdivision, an interest in the mobilehome shall be established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.

(3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.



(e) (1) Within 10 days following a judgment of abandonment, the management shall enter the abandoned mobilehome and complete an inventory of the contents and submit the inventory to the court.

(2) During this period the management shall post and mail notice of intent to sell the abandoned mobilehome and its contents under this section, and announcing the date of sale, in the same manner as provided for the notice of determination of abandonment under subdivision (b).

(3) At any time prior to the sale of a mobilehome under this section, any person having a right to possession of the mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court. Upon receipt of this payment and removal of the mobilehome from the premises pursuant to this paragraph, the management shall immediately file an acknowledgment of satisfaction of judgment pursuant to Section 724.030 of the Code of Civil Procedure.

(f) Following the judgment of abandonment, but not less than 10 days following the notice of sale specified in subdivision (e), the management may conduct a public sale of the abandoned mobilehome and its contents. The management may bid at the sale and shall have the right to offset its bids to the extent of the total amount due it under this section. The proceeds of the sale shall be retained by the management, but any unclaimed amount thus retained over and above the amount to which the management is entitled under this section shall be deemed abandoned property and shall be paid into the treasury of the county in which the sale took place within 30 days of the date of the sale. The former homeowner or any other owner may claim any or all of that unclaimed amount within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays any or all of that unclaimed amount to a claimant, neither the county nor any officer or employee of the county is liable to any other claimant as to the amount paid.

(g) Within 30 days of the date of the sale, the management shall submit to the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the inventory submitted to the court pursuant to subdivision (e).

(h) The management shall provide the purchaser at the sale with a copy of the judgment of abandonment and evidence of the sale, as shall be specified by the State Department of Housing and Community Development or the Department of Motor Vehicles, which shall register title in the abandoned mobilehome to the purchaser upon presentation thereof. The sale shall pass title to the purchaser free of any prior interest, including any security interest or lien, except the lien provided for in



Section 18116.1 of the Health and Safety Code, in the abandoned mobilehome.

SEC. 3. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000).

(2) An order enjoining the methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) (1) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars (\$5,000) where the trier of fact does all of the following:

(A) Finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(B) Makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345.

(C) Finds that an additional award is appropriate.

(2) Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member that additional award if the trier of fact has made the foregoing findings.

(c) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice.

(d) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.



SEC. 4. Section 116.130 of the Code of Civil Procedure is amended to read:

116.130. In this chapter, unless the context indicates otherwise:

(a) “Plaintiff” means the party who has filed a small claims action. The term includes a defendant who has filed a claim against a plaintiff.

(b) “Defendant” means the party against whom the plaintiff has filed a small claims action. The term includes a plaintiff against whom a defendant has filed a claim.

(c) “Judgment creditor” means the party, whether plaintiff or defendant, in whose favor a money judgment has been rendered.

(d) “Judgment debtor” means the party, whether plaintiff or defendant, against whom a money judgment has been rendered.

(e) “Person” means an individual, corporation, partnership, limited liability partnership, limited liability company, firm, association, or other entity.

(f) “Individual” means a natural person.

(g) “Party” means a plaintiff or defendant.

(h) “Motion” means a party’s written request to the court for an order or other action. The term includes an informal written request to the court, such as a letter.

(i) “Declaration” means a written statement signed by an individual which includes the date and place of signing, and a statement under penalty of perjury under the laws of this state that its contents are true and correct.

(j) “Good cause” means circumstances sufficient to justify the requested order or other action, as determined by the judge.

(k) “Mail” means first-class mail with postage fully prepaid, unless stated otherwise.

SEC. 5. Section 116.530 of the Code of Civil Procedure is amended to read:

116.530. (a) Except as permitted by this section, no attorney may take part in the conduct or defense of a small claims action.

(b) Subdivision (a) does not apply if the attorney is appearing to maintain or defend an action in any of the following capacities:

(1) By or against himself or herself.

(2) By or against a partnership in which he or she is a general partner and in which all the partners are attorneys.

(3) By or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys.

(c) Nothing in this section shall prevent an attorney from doing any of the following:





(1) Providing advice to a party to a small claims action, either before or after the commencement of the action.

(2) Testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify.

(3) Representing a party in an appeal to the superior court.

(4) Representing a party in connection with the enforcement of a judgment.

SEC. 6. Section 198.5 of the Code of Civil Procedure, as amended by Section 41 of Chapter 784 of the Statutes of 2002, is amended to read:

198.5. If sessions of the superior court are held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, pursuant to a local superior court rule that divides the county in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service. Nothing in this section precludes the court, in its discretion, from ordering a countywide venire in the interest of justice.

SEC. 7. Section 393 of the Code of Civil Procedure is amended to read:

393. Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the cause, or some part of the cause, arose, is the proper county for the trial of the following actions:

(a) For the recovery of a penalty or forfeiture imposed by statute, except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be tried in any county bordering on the lake, river, or stream, and opposite to the place where the offense was committed.

(b) Against a public officer or person especially appointed to execute the duties of a public officer, for an act done by the officer or person in virtue of the office, or against a person who, by the officer's command or in the officer's aid, does anything touching the duties of the officer.

SEC. 8. Section 415.50 of the Code of Civil Procedure is amended to read:

415.50. (a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the



relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

(b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party. The order shall direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period.

(c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government Code.

(d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons.

(e) As a condition of establishing that the party to be served cannot with reasonable diligence be served in another manner specified in this article, the court may not require that a search be conducted of public databases where access by a registered process server to residential addresses is prohibited by law or by published policy of the agency providing the database, including, but not limited to, voter registration rolls and records of the Department of Motor Vehicles.

SEC. 9. Section 1141.10 of the Code of Civil Procedure is amended to read:

1141.10. (a) The Legislature finds and declares that litigation involving small civil cases can be so costly and complex that efficiently resolving these civil cases is difficult, and that the resulting delays and expenses may deny parties their right to a timely resolution of minor civil disputes. The Legislature further finds and declares that arbitration has proven to be an efficient and equitable method for resolving small civil cases, and that courts should encourage or require the use of arbitration for those actions whenever possible.

(b) It is the intent of the Legislature that:

(1) Arbitration hearings held pursuant to this chapter shall provide parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes.

(2) Arbitration hearings shall be as informal as possible and shall provide the parties themselves maximum opportunity to participate



directly in the resolution of their disputes, and shall be held during nonjudicial hours whenever possible.

(3) Members of the State Bar selected to serve as arbitrators should have experience with cases of the type under dispute and are urged to volunteer their services without compensation whenever possible.

SEC. 10. Section 1141.11 of the Code of Civil Procedure is amended to read:

1141.11. (a) In each superior court with 18 or more judges, all nonexempt unlimited civil cases shall be submitted to arbitration under this chapter if the amount in controversy, in the opinion of the court, will not exceed fifty thousand dollars (\$50,000) for each plaintiff.

(b) In each superior court with fewer than 18 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all nonexempt, unlimited civil cases shall be submitted to arbitration under this chapter if the amount in controversy, in the opinion of the court, will not exceed fifty thousand dollars (\$50,000) for each plaintiff.

(c) Each superior court may provide by local rule, when it is determined to be in the best interests of justice, that all nonexempt, limited civil cases shall be submitted to arbitration under this chapter. This section does not apply to any action in small claims court, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161.

(d) (1) In each court that has adopted judicial arbitration pursuant to subdivision (c), all limited civil cases that involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court.

(2) The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

(3) For the purposes of this subdivision, the term "single defendant" means any of the following:

(A) An individual defendant, whether a person or an entity.

(B) Two or more persons covered by the same insurance policy applicable to the motor vehicle collision.

(C) Two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision.



(4) The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

SEC. 11. Section 1141.12 of the Code of Civil Procedure is amended to read:

1141.12. In all superior courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(a) Any cause, regardless of the amount in controversy, upon stipulation of the parties.

(b) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the amount in controversy as specified in Section 1141.11.

SEC. 12. Section 1141.16 of the Code of Civil Procedure is amended to read:

1141.16. (a) The determination of the amount in controversy, under subdivision (a) or (b) of Section 1141.11, shall be made by the court and the case referred to arbitration after all named parties have appeared or defaulted. The determination shall be made at a case management conference or based upon review of the written submissions of the parties, as provided in rules adopted by the Judicial Council. The determination shall be based on the total amount of damages, and the judge may not consider questions of liability or comparative negligence or any other defense. At that time the court shall also make a determination whether any prayer for equitable relief is frivolous or insubstantial. The determination of the amount in controversy and whether any prayer for equitable relief is frivolous or insubstantial may not be appealable. No determination pursuant to this section shall be made if all parties stipulate in writing that the amount in controversy exceeds the amount specified in Section 1141.11.

(b) The determination and any stipulation of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo.

(c) Except as provided in this section, the arbitration hearing may not be held until 210 days after the filing of the complaint, or 240 days after the filing of a complaint if the parties have stipulated to a continuance pursuant to subdivision (d) of Section 68616 of the Government Code. A case shall be submitted to arbitration at an earlier time upon any of the following:

(1) The stipulation of the parties to an earlier arbitration hearing.

(2) The written request of all plaintiffs, subject to a motion by a defendant for good cause shown to delay the arbitration hearing.

(3) An order of the court if the parties have stipulated, or the court has ordered under Section 1141.24, that discovery other than that permitted



under Section 2034 will be permitted after the arbitration award is rendered.

SEC. 13. Section 1141.18 of the Code of Civil Procedure is amended to read:

1141.18. (a) Arbitrators shall be retired judges, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators. Compensation for arbitrators may not be less than one hundred fifty dollars (\$150) per case, or one hundred fifty dollars (\$150) per day, whichever is greater. A superior court may set a higher level of compensation for that court. Arbitrators may waive compensation in whole or in part. No compensation shall be paid before the filing of the award by the arbitrator, or before the settlement of the case by the parties.

(c) In cases submitted to arbitration under Section 1141.11 or 1141.12, an arbitrator shall be assigned within 30 days from the time of submission to arbitration.

(d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1.

SEC. 14. Section 1141.24 of the Code of Civil Procedure is amended to read:

1141.24. In cases ordered to arbitration pursuant to Section 1141.11, no discovery other than that permitted by Section 2034 is permissible after an arbitration award except by stipulation of the parties or by leave of court upon a showing of good cause.

SEC. 15. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) Except as provided in subdivision (g), in any case filed under this chapter as a limited civil case, the court clerk may not allow access to the court file, index, register of actions, or other court records until 60 days following the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person, including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the



action, an attorney of a party in the action, or any other person who provides to the clerk the names of either of the following:

(1) At least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises.

(2) One of the parties or the case number, and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section, “good cause” includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (g), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and telephone number of the county bar association and the name and telephone number of an office funded by the federal Legal Services Corporation that provides legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to “all occupants” and mailed separately to the subject premises. The notice does not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall charge an additional fee of four dollars (\$4) for filing a first appearance by the plaintiff. This fee shall be included as part of the total filing fee for actions filed under this chapter.



(e) A superior court, after consultation with local associations of rental property owners, tenant groups, and providers of legal services to tenants, may exempt itself from the operation of this section upon a finding that unscrupulous eviction defense services are not a substantial problem in the county. The court shall review the finding every 12 months. An exempt court may not charge the additional fee authorized in subdivision (d).

(f) The Judicial Council shall examine the extent to which requests for access to files pursuant to an ex parte order under subdivision (a) are granted or denied, and if denied, the reason for the denial of access.

(g) This section does not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 16. Section 48295 of the Education Code is amended to read:

48295. Any judge of the superior court, in the county in which the school district is located, or in which the offense is committed, has jurisdiction of offenses committed under this article. A juvenile court has jurisdiction of a violation of Section 48293 as provided by Section 601.4 of the Welfare and Institutions Code.

SEC. 17. Section 12150 of the Fish and Game Code is amended to read:

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or the wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that the defendant did the killing or wounding, but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting the defendant from taking any bird or mammal.

If it is found that the defendant was negligent, but not grossly negligent, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.





SEC. 18. Section 12151 of the Fish and Game Code is amended to read:

12151. Whenever any person, while taking a bird or mammal, kills or wounds any domestic animal belonging to another and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that the defendant did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally or negligently, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period of five years.

SEC. 19. Section 68097 of the Government Code is amended to read:

68097. Witnesses in civil cases may demand the payment of their mileage and fees for one day, in advance, and when so demanded may not be compelled to attend until the allowances are paid except as hereinafter provided for employees of the Department of Justice who are peace officers or analysts in technical fields, peace officers of the Department of the California Highway Patrol, peace officer members of the State Fire Marshal's Office, other state employees, trial court employees, sheriffs, deputy sheriffs, marshals, deputy marshals, district attorney inspectors, probation officers, building inspectors, firefighters, and city police officers. For the purposes of this section and Sections 68097.1 to 68097.10, inclusive, only, the term "peace officer of the California Highway Patrol" shall include those persons employed as vehicle inspection specialists by the Department of the California Highway Patrol, the term "firefighter" has the definition provided in Section 50925, and a volunteer firefighter shall be deemed to be employed by the public entity for which he or she volunteers as a firefighter.

SEC. 20. Section 68097.1 of the Government Code is amended to read:

68097.1. (a) Whenever an employee of the Department of Justice who is a peace officer or an analyst in a technical field, peace officer of the Department of the California Highway Patrol, peace officer member of the State Fire Marshal's Office, sheriff, deputy sheriff, marshal,



deputy marshal, district attorney inspector, probation officer, building inspector, firefighter, or city police officer is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally, or by delivering two copies to his or her immediate superior at the public entity by which he or she is employed or an agent designated by that immediate superior to receive that service.

(b) Whenever any other state employee or any employee of the trial courts is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter, event, or transaction concerning which he or she has expertise gained in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally or by delivering two copies to his or her immediate superior or agent designated by that immediate superior to receive that service.

(c) The attendance of any person described in subdivisions (a) and (b) may be required pursuant to this section only in accordance with Section 1989 of the Code of Civil Procedure.

(d) As used in this section and in Sections 68097.2 and 68097.5, “tribunal” means any person or body before whom or which attendance of witnesses may be required by subpoena, including an arbitrator in arbitration proceedings.

SEC. 21. Section 68097.2 of the Government Code is amended to read:

68097.2. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, any firefighter, any state employee, any trial court employee, or any county employee, who is obliged by a subpoena issued pursuant to Section 68097.1 to attend as a witness, shall receive the salary or other compensation to which he or she is normally entitled from the public entity by which he or she is employed during the time that he or she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. He or she shall also receive from the public entity by which he or she is employed the actual necessary and reasonable traveling expenses incurred by him or her in complying with the subpoena.

(b) The party at whose request the subpoena is issued shall reimburse the public entity for the full cost to the public entity incurred in paying the peace officer, firefighter, state employee, trial court employee, or specified county employee his or her salary or other compensation and traveling expenses as provided for in this section, for each day that the



peace officer, firefighter, state employee, trial court employee, or specified county employee is required to remain in attendance pursuant to the subpoena. The amount of one hundred fifty dollars (\$150), together with the subpoena, shall be tendered to the person accepting the subpoena for each day that the peace officer, firefighter, state employee, trial court employee, or specified county employee is required to remain in attendance pursuant to the subpoena.

(c) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(d) If the actual expenses should later prove to be more than the amount deposited, the difference shall be paid to the public entity by the party at whose request the subpoena is issued.

(e) If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of an order directing the peace officer, firefighter, state employee, or trial court employee to appear on the date to which the proceeding is continued.

(f) For the purposes of the payment of the salary or other compensation of a volunteer firefighter pursuant to subdivision (a), a volunteer firefighter who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties as a volunteer firefighter, shall be deemed to be entitled to reasonable compensation evidenced by the compensation paid to firefighters in jurisdictions with similar geographic and economic characteristics. However, the requirements of subdivision (a) and of this subdivision are not applicable if a volunteer firefighter will receive his or her regular salary or other compensation pursuant to the policy of his or her regular employer, for the periods during which compensation is required under subdivision (a).

SEC. 22. Section 664 of the Harbors and Navigation Code is amended to read:

664. (a) When any person is arrested for a violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels, and that person is not immediately taken before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of that person, the offense charged, and the time and place where and when that person shall appear in court.

(b) The time specified in the notice to appear must be at least five days after the arrest.



(c) The place specified in the notice to appear shall be any of the following:

(1) Before a superior court judge who is within the county in which the offense charged is alleged to have been committed and who is nearest and most accessible to the place where the arrest is made.

(2) Upon demand of the person arrested, before a superior court judge at the county seat of the county in which the offense is alleged to have been committed.

(3) Before an officer authorized by the county, city, or city and county, to receive a deposit of bail.

(4) Before a superior court judge within 50 miles by the nearest road to the place of the alleged offense and whose county contains any portion of the body of water upon which the offense charged is alleged to have been committed.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give a written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in the magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by the defendant in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in the magistrate's discretion order that no further proceedings shall be had in the case.

Upon the making of any order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code.

(f) No warrant shall issue on any charge for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

SEC. 23. Section 667 of the Harbors and Navigation Code is amended to read:

667. In addition to any other court which may be a proper place of trial, any superior court location where cases of that type are tried, within 50 miles by the nearest road to the place of the alleged offense, shall be a proper place of trial of any person on a charge of violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels if the county in which the court is located includes any portion of the body of water upon which the offense charged is alleged to have been committed.

SEC. 24. Section 108580 of the Health and Safety Code is amended to read:

108580. When a toy is alleged to be in violation of this article, the department or the local health officer shall commence proceedings in the superior court in whose county the toy is located, for condemnation of the article.

SEC. 25. Section 110375 of the Health and Safety Code is amended to read:

110375. (a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

(b) No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

- (1) Protection of the contents of the package.
- (2) The requirements of machines used for enclosing the contents of the package.
- (3) Unavoidable product settling during shipping and handling.
- (4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information, such as those based on the regulations adopted by the Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.
- (5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function



to hold the product, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.

(6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.

(8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on the exterior packaging, accompanied by a clear and conspicuous disclosure that the representation is the “actual size” of the product or the immediate product container.

(9) The presence of any headspace within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.

(10) The exterior packaging contains a product delivery or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.

(11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.

(12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the product being sold, or a depiction of the actual size of the container prior to purchase.

(13) The exterior packaging consists of single or multiunit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

(14) The exterior packaging is for a combination of one purchased product, together with a free sample or gift, wherein the exterior packaging is necessarily larger than it would otherwise be due to the inclusion of the sample or gift, if the presence of both products and the



quantity of each product are clearly and conspicuously disclosed on the exterior packaging.

(c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the superior court of the county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any condition as the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner if the owner furnishes proper facilities for the return.

SEC. 26. Section 111880 of the Health and Safety Code is amended to read:

111880. If a food, drug, device, or cosmetic is alleged to be adulterated, misbranded, falsely advertised, or the sale of which is otherwise in violation of this part, the department shall commence proceedings in the superior court in whose jurisdiction the food, drug, device, or cosmetic is located, for condemnation of the article.

SEC. 27. Section 111895 of the Health and Safety Code is amended to read:

111895. Any superior court of this state may condemn any food, drug, device, or cosmetic under provisions of this part. In the absence of an order, the food, drug, device, or cosmetic may be destroyed under the supervision of an authorized agent of the department who has the written consent of the owner, his or her attorney, or authorized representative.

SEC. 28. Section 117070 of the Health and Safety Code is amended to read:

117070. Any violation of any rule or regulation lawfully made by the public agency is a misdemeanor. The superior court of the county within which the reservoir lies in whole or in part is a proper place for trial of all prosecutions for violations of any rules and regulations adopted by the public agency.

SEC. 29. Section 117120 of the Health and Safety Code is amended to read:

117120. Any violation of any rule or regulation lawfully made by the governmental agency is a misdemeanor. The superior court of the county within which the reservoir lies in whole or in part is a proper place for trial of all prosecutions for violations of any rules and regulations adopted by the governmental agency.

SEC. 30. Section 6436 of the Labor Code is amended to read:

6436. The criminal complaint regarding a violation of Section 6505.5 may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in the superior court of any county in the state with jurisdiction over the contractor or employer, by





reason of the contractor's or employer's act or failure to act within that county. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint, but if the case was referred to the prosecutor by the division, or some other governmental unit, one-half of the civil or criminal penalty assessed shall be paid to that governmental unit.

SEC. 31. Section 1034 of the Penal Code is repealed.

SEC. 32. Section 1035 of the Penal Code is amended to read:

1035. A defendant arrested, held, or present in a county other than that in which an indictment, information, felony complaint, or felony probation violation is pending against the defendant, may state in writing his or her agreement to plead guilty or nolo contendere to some or all of the pending charges, to waive trial or hearing in the county in which the pleading is pending, and to consent to disposition of the case in the county in which that defendant was arrested, held, or present, subject to the approval of the district attorney for each county. Upon receipt of the defendant's statement and of the written approval of the district attorneys, the clerk of the court in which the pleading is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the county in which the defendant is arrested, held, or present, and the prosecution shall continue in that county. However, the proceedings shall be limited solely to the purposes of plea and sentencing and not for trial. If, after the proceeding has been transferred pursuant to this section, the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceeding shall be restored to the docket of that court. The defendant's statement that the defendant wishes to plead guilty or nolo contendere may not be used against the defendant.

SEC. 33. Section 1038 of the Penal Code is amended to read:

1038. The Judicial Council shall adopt rules of practice and procedure for the change of venue in criminal actions.

SEC. 34. Section 1039 of the Penal Code is repealed.

SEC. 35. Section 1462.2 of the Penal Code is amended to read:

1462.2. Except as otherwise provided in the Vehicle Code, the proper court for the trial of criminal cases amounting to misdemeanor shall be the superior court of the county within which the offense charged was committed.

If an action or proceeding is commenced in a court other than the court herein designated as the proper court for the trial, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time of pleading, requests an order transferring the action or proceeding to the proper court. If after that request it appears that the action or proceeding was not commenced in the proper court, the



court shall order the action or proceeding transferred to the proper court. The judge shall, at the time of arraignment, inform the defendant of the right to be tried in the county where the offense was committed.

SEC. 36. Section 5560 of the Public Resources Code is amended to read:

5560. (a) Violation of any ordinance, rule, or regulation adopted pursuant to this article is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail for a period not to exceed six months, or by both fine and imprisonment, unless the board provides that a violation of any ordinance, rule, or regulation is an infraction, which shall be punishable by a fine not to exceed fifty dollars (\$50).

(b) Any superior court of a county lying wholly or in part within the district is a proper court for trial of all prosecutions under this article for violations of any ordinance, rule, or regulation adopted by the board.

SEC. 36.5. Section 5560 of the Public Resources Code is amended to read:

5560. (a) Violation of an ordinance, rule, or regulation adopted pursuant to this article is a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed six months, or by both that fine and imprisonment, unless the board provides that a violation of an ordinance, rule, or regulation is an infraction, that is punishable by:

(1) A fine not exceeding one hundred dollars (\$100) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance, rule, or regulation within one year.

(3) A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance, rule, or regulation within one year.

(b) A superior court of a county lying wholly or in part within the district is a proper court for trial of all prosecutions under this article for violations of an ordinance, rule, or regulation adopted by the board.

SEC. 37. Section 310 of the Water Code is amended to read:

310. All prosecutions for the violation of any of the provisions of this article shall be instituted in the superior court of the county where the well is situated.

SEC. 38. Section 36.5 of this bill incorporates amendments to Section 5560 of the Public Resources Code proposed by both this bill and AB 504. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 5560 of the Public Resources Code, and (3) this bill is enacted



after AB 504, in which case Section 36 of this bill shall not become operative.

O

